

107TH CONGRESS  
1ST SESSION

# S. 1081

To amend the Internal Revenue Code of 1986 to allow a business credit for the development of low-to-moderate income housing for home ownership, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

JUNE 21, 2001

Mr. TORRICELLI (for himself and Mr. DAYTON) introduced the following bill;  
which was read twice and referred to the Committee on Finance

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## A BILL

To amend the Internal Revenue Code of 1986 to allow a business credit for the development of low-to-moderate income housing for home ownership, and for other purposes.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

3       **SECTION 1. SHORT TITLE; ETC.**

4       (a) SHORT TITLE.—This Act may be cited as the  
5       “Low-to-Moderate Income Home Ownership Tax Credit  
6       Act”.

7       (b) TABLE OF CONTENTS.—The table of contents for  
8       this Act is as follows:

Sec. 1. Short title; etc.

Sec. 2. Credit for low-to-moderate income housing for home ownership.

Sec. 3. Partial exclusion of gain from sale of low-to-moderate income housing.

Sec. 4. Expansion of rehabilitation credit.

**1 SEC. 2. CREDIT FOR LOW-TO-MODERATE INCOME HOUSING**  
**2 FOR HOME OWNERSHIP.**

3 (a) IN GENERAL.—Subpart D of part IV of sub-  
 4 chapter A of chapter 1 of the Internal Revenue Code of  
 5 1986 (relating to business related credits) is amended by  
 6 adding at the end the following:

7 **“SEC. 42A. LOW-TO-MODERATE INCOME HOME OWNERSHIP**  
 8 **CREDIT.**

9 “(a) IN GENERAL.—For purposes of section 38, the  
 10 amount of the home ownership credit determined under  
 11 this section for any taxable year in the credit period shall  
 12 be an amount equal to the applicable percentage of the  
 13 qualified basis of each qualified low-to-moderate income  
 14 building.

15 “(b) APPLICABLE PERCENTAGE: 70 PERCENT  
 16 PRESENT VALUE CREDIT FOR NEW BUILDINGS; 30 PER-  
 17 CENT PRESENT VALUE CREDIT FOR EXISTING BUILD-  
 18 INGS.—For purposes of this section—

19 “(1) IN GENERAL.—The term ‘applicable per-  
 20 centage’ means the appropriate percentage pre-  
 21 scribed by the Secretary for the earlier of—

1           “(A) the first month of the credit period  
 2           with respect to a low-to-moderate income build-  
 3           ing, or

4           “(B) at the election of the taxpayer, the  
 5           month in which the taxpayer and the housing  
 6           credit agency enter into an agreement with re-  
 7           spect to such building (which is binding on such  
 8           agency, the taxpayer, and all successors in in-  
 9           terest) as to the housing credit dollar amount  
 10          to be allocated to such building.

11          A month may be elected under subparagraph (B)  
 12          only if the election is made not later than the 5th  
 13          day after the close of such month. Such an election,  
 14          once made, shall be irrevocable.

15          “(2) METHOD OF PRESCRIBING PERCENT-  
 16          AGES.—The percentages prescribed by the Secretary  
 17          for any month shall be percentages which will yield  
 18          over a 10-year period amounts of credit under sub-  
 19          section (a) which have a present value equal to—

20                 “(A) 70 percent of the qualified basis of a  
 21                 new building, and

22                 “(B) 30 percent of the qualified basis of  
 23                 an existing building.

24          “(3) METHOD OF DISCOUNTING.—The present  
 25          value under paragraph (2) shall be determined—

1 “(A) as of the last day of the 1st year of  
2 the 10-year period referred to in paragraph (2),

3 “(B) by using a discount rate equal to 72  
4 percent of the average of the annual Federal  
5 mid-term rate and the annual Federal long-  
6 term rate applicable under section 1274(d)(1)  
7 to the month applicable under subparagraph  
8 (A) or (B) of paragraph (1) and compounded  
9 annually, and

10 “(C) by assuming that the credit allowable  
11 under this section for any year is received on  
12 the last day of such year.

13 “(c) QUALIFIED BASIS; ELIGIBLE BASIS; QUALIFIED  
14 LOW-TO-MODERATE INCOME BUILDING.—For purposes  
15 of this section—

16 “(1) QUALIFIED BASIS.—

17 “(A) DETERMINATION.—The qualified  
18 basis of any qualified low-to-moderate income  
19 building for any taxable year is an amount  
20 equal to—

21 “(i) the applicable fraction (deter-  
22 mined as of the close of such taxable year)  
23 of

24 “(ii) the eligible basis of such build-  
25 ing.

1 “(B) APPLICABLE FRACTION.—

2 “(i) IN GENERAL.—For purposes of  
3 subparagraph (A), the term ‘applicable  
4 fraction’ means the smaller of the unit  
5 fraction or the floor space fraction.

6 “(ii) UNIT FRACTION.—For purposes  
7 of clause (i), the term ‘unit fraction’ means  
8 the fraction—

9 “(I) the numerator of which is  
10 the number of low-to-moderate income  
11 units in the building, and

12 “(II) the denominator of which is  
13 the number of all units (whether or  
14 not occupied) in such building.

15 “(iii) FLOOR SPACE FRACTION.—For  
16 purposes of clause (i), the term ‘floor space  
17 fraction’ means the fraction—

18 “(I) the numerator of which is  
19 the total floor space of the low-to-  
20 moderate income units in such build-  
21 ing, and

22 “(II) the denominator of which is  
23 the total floor space of all units  
24 (whether or not occupied) in such  
25 building.

1 “(C) ELIGIBLE BASIS.—

2 “(i) IN GENERAL.—The eligible basis  
3 of any qualified low-to-moderate income  
4 building for any taxable year shall be de-  
5 termined under rules similar to the rules  
6 under section 42(d), except that—

7 “(I) the determination of the ad-  
8 justed basis of any building shall be  
9 made as of the beginning of the credit  
10 period, and

11 “(II) such basis shall include de-  
12 velopment costs properly attributable  
13 to such building.

14 “(ii) DEVELOPMENT COSTS.—For  
15 purposes of clause (i)(II), the term ‘devel-  
16 opment costs’ includes—

17 “(I) site preparation costs,

18 “(II) State and local impact fees,

19 “(III) reasonable development  
20 costs,

21 “(IV) professional fees related to  
22 basis items,

23 “(V) construction financing costs  
24 related to basis items other than land,  
25 and

1 “(VI) on-site and adjacent im-  
 2 provements required by State and  
 3 local governments.

4 “(2) QUALIFIED LOW-TO-MODERATE INCOME  
 5 BUILDING.—The term ‘qualified low-to-moderate in-  
 6 come building’ means any building which is part of  
 7 a qualified low-to-moderate income development  
 8 project at all times during the period—

9 “(A) beginning on the 1st day in the com-  
 10 pliance period on which such building is part of  
 11 such a development project, and

12 “(B) ending on the last day of the compli-  
 13 ance period with respect to such building.

14 “(d) REHABILITATION EXPENDITURES TREATED AS  
 15 SEPARATE NEW BUILDING.—Rehabilitation expenditures  
 16 paid or incurred by the taxpayer with respect to any build-  
 17 ing shall be treated for purposes of this section as a sepa-  
 18 rate new building under the rules of section 42(e).

19 “(e) DEFINITION AND SPECIAL RULES RELATING TO  
 20 CREDIT PERIOD.—

21 “(1) CREDIT PERIOD DEFINED.—For purposes  
 22 of this section, the term ‘credit period’ means, with  
 23 respect to any building, the period of 10 taxable  
 24 years beginning with the taxable year in which the  
 25 building (or a low-to-moderate income unit in such

building) is first sold by the taxpayer to a low-to moderate income individual after being placed in service.

“(2) SPECIAL RULE FOR 1ST YEAR OF CREDIT PERIOD.—

“(A) IN GENERAL.—The credit allowable under subsection (a) with respect to any building for the 1st taxable year of the credit period shall be determined by substituting for the applicable fraction under subsection (c)(1) the fraction—

“(i) the numerator of which is the sum of the applicable fractions determined under subsection (c)(1) as of the close of each full month of such year during which such building was in service, and

“(ii) the denominator of which is 12.

“(B) DISALLOWED 1ST YEAR CREDIT ALLOWED IN 11TH YEAR.—Any reduction by reason of subparagraph (A) in the credit allowable (without regard to subparagraph (A)) for the 1st taxable year of the credit period shall be allowable under subsection (a) for the 1st taxable year following the credit period.



1           “(3) CREDIT PERIOD FOR EXISTING BUILDINGS  
 2           NOT TO BEGIN BEFORE REHABILITATION CREDIT  
 3           ALLOWED.—The credit period for an existing build-  
 4           ing shall not begin before the 1st taxable year of the  
 5           credit period for rehabilitation expenditures with re-  
 6           spect to the building.

7           “(f) QUALIFIED LOW-TO-MODERATE INCOME DE-  
 8           VELOPMENT PROJECT.—For purposes of this section—

9           “(1) IN GENERAL.—The term ‘qualified low-to-  
 10          moderate income development project’ means any  
 11          development project of 1 or more for qualified low-  
 12          to-moderate income buildings located in an area if  
 13          40 percent or more of the residential units in such  
 14          development project are occupied and owned by indi-  
 15          viduals whose income is 100 percent or less of area  
 16          median gross income.

17          “(2) TREATMENT OF UNITS OCCUPIED BY INDIV-  
 18          IDUALS WHOSE INCOMES RISE ABOVE LIMIT.—Not-  
 19          withstanding an increase in the income of the occu-  
 20          pants of a low-to-moderate income unit above the in-  
 21          come limitation applicable under paragraph (2) or  
 22          (3), such unit shall continue to be treated as a low-  
 23          to-moderate income unit if the income of such occu-  
 24          pants initially met such income limitation and such  
 25          unit continues to be so restricted.

1           “(3) CERTAIN RULES MADE APPLICABLE.—  
2       Paragraphs (3), (5), (7), and (8) of section 42(g)  
3       shall apply for purposes of determining whether any  
4       development project is a qualified low-to-moderate  
5       income development project.

6           “(g) LIMITATION ON AGGREGATE CREDIT ALLOW-  
7       ABLE WITH RESPECT TO DEVELOPMENT PROJECTS LO-  
8       CATED IN A STATE.—

9           “(1) CREDIT MAY NOT EXCEED CREDIT  
10       AMOUNT ALLOCATED TO BUILDING.—The amount of  
11       the credit determined under this section for any tax-  
12       able year with respect to any building shall not ex-  
13       ceed the housing credit dollar amount allocated to  
14       such building under rules similar to the rules of sec-  
15       tion 42(h)(1) (determined without regard to sub-  
16       paragraph (D) thereof).

17           “(2) ALLOCATED CREDIT AMOUNT TO APPLY  
18       TO ALL TAXABLE YEARS ENDING DURING OR AFTER  
19       CREDIT ALLOCATION YEAR.—Any housing credit dol-  
20       lar amount allocated to any building for any cal-  
21       endar year—

22           “(A) shall apply to such building for all  
23       taxable years in the credit period ending during  
24       or after such calendar year, and

1           “(B) shall reduce the aggregate housing  
2           credit dollar amount of the allocating agency  
3           only for such calendar year.

4           “(3) HOUSING CREDIT DOLLAR AMOUNT FOR  
5           AGENCIES.—

6           “(A) IN GENERAL.—The aggregate hous-  
7           ing credit dollar amount which a housing credit  
8           agency may allocate for any calendar year is  
9           the portion of the State housing credit ceiling  
10          allocated under this paragraph for such cal-  
11          endar year to such agency.

12          “(B) STATE CEILING INITIALLY ALLO-  
13          CATED TO STATE HOUSING CREDIT AGEN-  
14          CIES.—Except as provided in subparagraphs  
15          (D) and (E), the State housing credit ceiling  
16          for each calendar year shall be allocated to the  
17          housing credit agency of such State. If there is  
18          more than 1 housing credit agency of a State,  
19          all such agencies shall be treated as a single  
20          agency.

21          “(C) STATE HOUSING CREDIT CEILING.—  
22          The State housing credit ceiling applicable to  
23          any State and any calendar year shall be an  
24          amount equal to the sum of—

1 “(i) the unused State housing credit  
 2 ceiling (if any) of such State for the pre-  
 3 ceding calendar year,

4 “(ii) the greater of—

5 “(I) \$1.75 multiplied by the  
 6 State population, or

7 “(II) \$2,000,000,

8 “(iii) the amount of State housing  
 9 credit ceiling returned in the calendar year,  
 10 plus

11 “(iv) the amount (if any) allocated  
 12 under subparagraph (D) to such State by  
 13 the Secretary.

14 For purposes of clause (i), the unused State  
 15 housing credit ceiling for any calendar year is  
 16 the excess (if any) of the sum of the amounts  
 17 described in clauses (ii) through (iv) over the  
 18 aggregate housing credit dollar amount allo-  
 19 cated for such year. For purposes of clause (iii),  
 20 the amount of State housing credit ceiling re-  
 21 turned in the calendar year equals the housing  
 22 credit dollar amount previously allocated within  
 23 the State to any development project which fails  
 24 to meet the 10 percent test under section  
 25 42(h)(1)(E)(ii) on a date after the close of the

1           calendar year in which the allocation was made  
 2           or which does not become a qualified low-to-  
 3           moderate income development project within the  
 4           period required by this section or the terms of  
 5           the allocation or to any development project  
 6           with respect to which an allocation is canceled  
 7           by mutual consent of the housing credit agency  
 8           and the allocation recipient.

9           “(D)       UNUSED       HOUSING       CREDIT  
 10          CARRYOVERS   ALLOCATED   AMONG   CERTAIN  
 11          STATES.—

12               “(i) IN GENERAL.—The unused hous-  
 13               ing credit carryover of a State for any cal-  
 14               endar year shall be assigned to the Sec-  
 15               retary for allocation among qualified  
 16               States for the succeeding calendar year.

17               “(ii) UNUSED HOUSING CREDIT CAR-  
 18               RYOVER.—For purposes of this subpara-  
 19               graph, the unused housing credit carryover  
 20               of a State for any calendar year is the ex-  
 21               cess (if any) of the unused State housing  
 22               credit ceiling for such year (as defined in  
 23               subparagraph (C)(i)) over the excess (if  
 24               any) of —

1 “(I) the unused State housing  
2 credit ceiling for the year preceding  
3 such year, over

4 “(II) the aggregate housing cred-  
5 it dollar amount allocated for such  
6 year.

7 “(iii) FORMULA FOR ALLOCATION OF  
8 UNUSED HOUSING CREDIT CARRYOVERS  
9 AMONG QUALIFIED STATES.—The amount  
10 allocated under this subparagraph to a  
11 qualified State for any calendar year shall  
12 be the amount determined by the Secretary  
13 to bear the same ratio to the aggregate un-  
14 used housing credit carryovers of all States  
15 for the preceding calendar year as such  
16 State’s population for the calendar year  
17 bears to the population of all qualified  
18 States for the calendar year. For purposes  
19 of the preceding sentence, population shall  
20 be determined in accordance with section  
21 146(j).

22 “(iv) QUALIFIED STATE.—For pur-  
23 poses of this subparagraph, the term  
24 ‘qualified State’ means, with respect to a  
25 calendar year, any State—

1 “(I) which allocated its entire  
 2 State housing credit ceiling for the  
 3 preceding calendar year, and

4 “(II) for which a request is made  
 5 (not later than May 1 of the calendar  
 6 year) to receive an allocation under  
 7 clause (iii).

8 “(E) SPECIAL RULE FOR STATES WITH  
 9 CONSTITUTIONAL HOME RULE CITIES.—For  
 10 purposes of this subsection—

11 “(i) IN GENERAL.—The aggregate  
 12 housing credit dollar amount for any con-  
 13 stitutional home rule city for any calendar  
 14 year shall be an amount which bears the  
 15 same ratio to the State housing credit ceil-  
 16 ing for such calendar year as—

17 “(I) the population of such city,  
 18 bears to

19 “(II) the population of the entire  
 20 State.

21 “(ii) COORDINATION WITH OTHER AL-  
 22 LOCATIONS.—In the case of any State  
 23 which contains 1 or more constitutional  
 24 home rule cities, for purposes of applying  
 25 this paragraph with respect to housing

1 credit agencies in such State other than  
 2 constitutional home rule cities, the State  
 3 housing credit ceiling for any calendar year  
 4 shall be reduced by the aggregate housing  
 5 credit dollar amounts determined for such  
 6 year for all constitutional home rule cities  
 7 in such State.

8 “(iii) CONSTITUTIONAL HOME RULE  
 9 CITY.—For purposes of this paragraph, the  
 10 term ‘constitutional home rule city’ has the  
 11 meaning given such term by section  
 12 146(d)(3)(C).

13 “(F) STATE MAY PROVIDE FOR DIF-  
 14 FERENT ALLOCATION.—Rules similar to the  
 15 rules of section 146(e) (other than paragraph  
 16 (2)(B) thereof) shall apply for purposes of this  
 17 paragraph.

18 “(G) POPULATION.—For purposes of this  
 19 paragraph, population shall be determined in  
 20 accordance with section 146(j).

21 “(H) COST-OF-LIVING ADJUSTMENT.—

22 “(i) IN GENERAL.—In the case of a  
 23 calendar year after 2002, the \$2,000,000  
 24 and \$1.75 amounts in subparagraph (C)



1 shall each be increased by an amount equal  
2 to—

3 “(I) such dollar amount, multi-  
4 plied by

5 “(II) the cost-of-living adjust-  
6 ment determined under section  
7 1(f)(3) for such calendar year by sub-  
8 stituting ‘calendar year 2001’ for ‘cal-  
9 endar year 1992’ in subparagraph (B)  
10 thereof.

11 “(ii) ROUNDING.—

12 “(I) In the case of the  
13 \$2,000,000 amount, any increase  
14 under clause (i) which is not a mul-  
15 tiple of \$5,000 shall be rounded to the  
16 next lowest multiple of \$5,000.

17 “(II) In the case of the \$1.75  
18 amount, any increase under clause (i)  
19 which is not a multiple of 5 cents  
20 shall be rounded to the next lowest  
21 multiple of 5 cents.

22 “(4) PORTION OF STATE CEILING SET-ASIDE  
23 FOR CERTAIN DEVELOPMENT PROJECTS INVOLVING  
24 QUALIFIED NONPROFIT ORGANIZATIONS.—

“(A) IN GENERAL.—Not more than 90 percent of the State housing credit ceiling for any State for any calendar year shall be allocated to development projects other than qualified low-to-moderate income development projects described in subparagraph (B).

“(B) DEVELOPMENT PROJECTS INVOLVING QUALIFIED NONPROFIT ORGANIZATIONS.—For purposes of subparagraph (A), a qualified low-to-moderate income development project is described in this subparagraph if a qualified nonprofit organization is to materially participate (within the meaning of section 469(h)) in the development and operation of the development project throughout the compliance period.

“(C) QUALIFIED NONPROFIT ORGANIZATION.—For purposes of this paragraph, the term ‘qualified nonprofit organization’ means any organization if—

“(i) such organization is described in paragraph (3) or (4) of section 501(c) and is exempt from tax under section 501(a),

“(ii) such organization is determined by the State housing credit agency not to

1 be affiliated with or controlled by a for-  
 2 profit organization; and

3 “(iii) 1 of the exempt purposes of  
 4 such organization includes the fostering of  
 5 low-to-moderate income housing.

6 “(D) TREATMENT OF CERTAIN SUBSIDI-  
 7 ARIES.—

8 “(i) IN GENERAL.—For purposes of  
 9 this paragraph, a qualified nonprofit orga-  
 10 nization shall be treated as satisfying the  
 11 ownership and material participation test  
 12 of subparagraph (B) if any qualified cor-  
 13 poration in which such organization holds  
 14 stock satisfies such test.

15 “(ii) QUALIFIED CORPORATION.—For  
 16 purposes of clause (i), the term ‘qualified  
 17 corporation’ means any corporation if 100  
 18 percent of the stock of such corporation is  
 19 held by 1 or more qualified nonprofit orga-  
 20 nizations at all times during the period  
 21 such corporation is in existence.

22 “(E) STATE MAY NOT OVERRIDE SET-  
 23 ASIDE.—Nothing in subparagraph (F) of para-  
 24 graph (3) shall be construed to permit a State

1 not to comply with subparagraph (A) of this  
 2 paragraph.

3 “(5) BUILDINGS ELIGIBLE FOR CREDIT ONLY  
 4 IF MINIMUM LONG-TERM COMMITMENT TO LOW-TO-  
 5 MODERATE INCOME HOUSING.—

6 “(A) IN GENERAL.—No credit shall be al-  
 7 lowed by reason of this section with respect to  
 8 any building for the taxable year unless a low-  
 9 to-moderate income housing commitment is in  
 10 effect as of the end of such taxable year.

11 “(B) LOW-TO-MODERATE INCOME HOUS-  
 12 ING COMMITMENT.—For purposes of this para-  
 13 graph, the term ‘low-to-moderate income hous-  
 14 ing commitment’ means any agreement between  
 15 the taxpayer and the housing credit agency—

16 “(i) which requires that the applicable  
 17 fraction (as defined in subsection  
 18 (c)(1)(B)) for the building for each taxable  
 19 year in the compliance period will not be  
 20 less than the applicable fraction specified  
 21 in such agreement,

22 “(ii) which allows individuals who  
 23 meet the income limitation applicable to  
 24 the building under subsection (f) (whether  
 25 prospective, present, or former occupants

of the building) the right to enforce in any State court the requirement of clause (i), “(iii) which allows the taxpayer the right of first refusal to purchase the building from the low-or-moderate income individual to whom the taxpayer first sold the building,

“(iv) which is binding on all successors of the taxpayer, and

“(v) which, with respect to the property, is recorded pursuant to State law as a restrictive covenant.

“(C) ALLOCATION OF CREDIT MAY NOT EXCEED AMOUNT NECESSARY TO SUPPORT COMMITMENT.—The housing credit dollar amount allocated to any building may not exceed the amount necessary to support the applicable fraction specified in the low-to-moderate income housing commitment for such building.

“(D) EFFECT OF NONCOMPLIANCE.—If, during a taxable year, there is a determination that a low-to-moderate income housing agreement was not in effect as of the beginning of such year, such determination shall not apply to any period before such year and subparagraph

1 (A) shall be applied without regard to such de-  
2 termination if the failure is corrected within 1  
3 year from the date of the determination.

4 “(E) DEVELOPMENT PROJECTS WHICH  
5 CONSIST OF MORE THAN 1 BUILDING.—The ap-  
6 plication of this paragraph to development  
7 projects which consist of more than 1 building  
8 shall be made under regulations prescribed by  
9 the Secretary.

10 “(6) SPECIAL RULES.—

11 “(A) BUILDING MUST BE LOCATED WITH-  
12 IN JURISDICTION OF CREDIT AGENCY.—A hous-  
13 ing credit agency may allocate its aggregate  
14 housing credit dollar amount only to buildings  
15 located in the jurisdiction of the governmental  
16 unit of which such agency is a part.

17 “(B) AGENCY ALLOCATIONS IN EXCESS OF  
18 LIMIT.—If the aggregate housing credit dollar  
19 amounts allocated by a housing credit agency  
20 for any calendar year exceed the portion of the  
21 State housing credit ceiling allocated to such  
22 agency for such calendar year, the housing  
23 credit dollar amounts so allocated shall be re-  
24 duced (to the extent of such excess) for build-

1           ings in the reverse of the order in which the al-  
2           locations of such amounts were made.

3           “(C) CREDIT REDUCED IF ALLOCATED  
4           CREDIT DOLLAR AMOUNT IS LESS THAN CREDIT  
5           WHICH WOULD BE ALLOWABLE WITHOUT RE-  
6           GARD TO SALES CONVENTION, ETC.—

7           “(i) IN GENERAL.—The amount of  
8           the credit determined under this section  
9           with respect to any building shall not ex-  
10          ceed the clause (ii) percentage of the  
11          amount of the credit which would (but for  
12          this subparagraph) be determined under  
13          this section with respect to such building.

14          “(ii) DETERMINATION OF PERCENT-  
15          AGE.—For purposes of clause (i), the  
16          clause (ii) percentage with respect to any  
17          building is the percentage which—

18                 “(I) the housing credit dollar  
19                 amount allocated to such building  
20                 bears to

21                 “(II) the credit amount deter-  
22                 mined in accordance with clause (iii).

23          “(iii) DETERMINATION OF CREDIT  
24          AMOUNT.—The credit amount determined  
25          in accordance with this clause is the

amount of the credit which would (but for this subparagraph) be determined under this section with respect to the building if this section were applied without regard to paragraph (2)(A) of subsection (e).

“(D) HOUSING CREDIT AGENCY TO SPECIFY APPLICABLE PERCENTAGE AND MAXIMUM QUALIFIED BASIS.—In allocating a housing credit dollar amount to any building, the housing credit agency shall specify the applicable percentage and the maximum qualified basis which may be taken into account under this section with respect to such building. The applicable percentage and maximum qualified basis so specified shall not exceed the applicable percentage and qualified basis determined under this section without regard to this subsection.

“(7) OTHER DEFINITIONS.—For purposes of this subsection—

“(A) HOUSING CREDIT AGENCY.—The term ‘housing credit agency’ means any agency authorized to carry out this subsection.

“(B) POSSESSIONS TREATED AS STATES.—The term ‘State’ includes a possession of the United States.



1       “(h) DEFINITIONS AND SPECIAL RULES.—For pur-  
2 poses of this section—

3               “(1) COMPLIANCE PERIOD.—The term ‘compli-  
4 ance period’ means, with respect to any building, the  
5 period of 5 taxable years beginning with the 1st tax-  
6 able year of the credit period with respect thereto.

7               “(2) NEW BUILDING.—The term ‘new building’  
8 means a building the original use of which begins  
9 with the taxpayer.

10              “(3) EXISTING BUILDING.—The term ‘existing  
11 building’ means any building which is not a new  
12 building.

13              “(4) APPLICATION TO ESTATES AND TRUSTS.—  
14 In the case of an estate or trust, the amount of the  
15 credit determined under subsection (a) and any in-  
16 crease in tax under subsection (j) shall be appor-  
17 tioned between the estate or trust and the bene-  
18 ficiaries on the basis of the income of the estate or  
19 trust allocable to each.

20              “(i) RECAPTURE OF CREDIT.—If—

21               “(1) as of the close of any taxable year in the  
22 compliance period, the amount of the qualified basis  
23 of any building with respect to the taxpayer is less  
24 than

1           “(2) the amount of such basis as of the close  
 2           of the preceding taxable year,  
 3           then the taxpayer’s tax under this chapter for the  
 4           taxable year shall be increased by the credit recap-  
 5           ture amount determined under rules similar to the  
 6           rules of section 42(j).

7           “(j) APPLICATION OF AT-RISK RULES.—For pur-  
 8           poses of this section, rules similar to the rules of section  
 9           42(k) shall apply.

10          “(k) CERTIFICATIONS AND OTHER REPORTS TO SEC-  
 11          RETARY.—

12           “(1) CERTIFICATION WITH RESPECT TO 1ST  
 13          YEAR OF CREDIT PERIOD.—Following the close of  
 14          the 1st taxable year in the credit period with respect  
 15          to any qualified low-to-moderate income building,  
 16          the taxpayer shall certify to the Secretary (at such  
 17          time and in such form and in such manner as the  
 18          Secretary prescribes)—

19           “(A) the taxable year, and calendar year,  
 20           in which such building was first sold after being  
 21           placed in service,

22           “(B) the adjusted basis and eligible basis  
 23           of such building as of the beginning of the cred-  
 24           it period,

1           “(C) the maximum applicable percentage  
 2           and qualified basis permitted to be taken into  
 3           account by the appropriate housing credit agen-  
 4           cy under subsection (g),

5           “(D) the election made under subsection  
 6           (f) with respect to the qualified low-to-moderate  
 7           income housing development project of which  
 8           such building is a part, and

9           “(E) such other information as the Sec-  
 10          retary may require.

11       In the case of a failure to make the certification re-  
 12       quired by the preceding sentence on the date pre-  
 13       scribed therefor, unless it is shown that such failure  
 14       is due to reasonable cause and not to willful neglect,  
 15       no credit shall be allowable by reason of subsection  
 16       (a) with respect to such building for any taxable  
 17       year ending before such certification is made.

18       “(2) ANNUAL REPORTS TO THE SECRETARY.—

19       The Secretary may require taxpayers to submit an  
 20       information return (at such time and in such form  
 21       and manner as the Secretary prescribes) for each  
 22       taxable year setting forth—

23           “(A) the qualified basis for the taxable  
 24           year of each qualified low-to-moderate income  
 25           building of the taxpayer,

1           “(B) the information described in para-  
2           graph (1)(C) for the taxable year, and

3           “(C) such other information as the Sec-  
4           retary may require.

5           The penalty under section 6652(j) shall apply to any  
6           failure to submit the return required by the Sec-  
7           retary under the preceding sentence on the date pre-  
8           scribed therefor.

9           “(3) ANNUAL REPORTS FROM HOUSING CREDIT  
10          AGENCIES.—Each agency which allocates any hous-  
11          ing credit amount to any building for any calendar  
12          year shall submit to the Secretary (at such time and  
13          in such manner as the Secretary shall prescribe) an  
14          annual report specifying—

15               “(A) the amount of housing credit amount  
16               allocated to each building for such year,

17               “(B) sufficient information to identify each  
18               such building and the taxpayer with respect  
19               thereto, and

20               “(C) such other information as the Sec-  
21               retary may require.

22          The penalty under section 6652(j) shall apply to any  
23          failure to submit the report required by the pre-  
24          ceding sentence on the date prescribed therefor.

1       “(1) RESPONSIBILITIES OF HOUSING CREDIT AGEN-  
2 CIES.—

3               “(1) PLANS FOR ALLOCATION OF CREDIT  
4 AMONG DEVELOPMENT PROJECTS.—

5               “(A) IN GENERAL.—Notwithstanding any  
6 other provision of this section, the housing cred-  
7 it dollar amount with respect to any building  
8 shall be zero unless—

9                       “(i) such amount was allocated pursu-  
10 ant to a qualified allocation plan of the  
11 housing credit agency which is approved by  
12 the governmental unit (in accordance with  
13 rules similar to the rules of section  
14 147(f)(2) (other than subparagraph (B)(ii)  
15 thereof)) of which such agency is a part,

16                      “(ii) such agency notifies the chief ex-  
17 ecutive officer (or the equivalent) of the  
18 local jurisdiction within which the building  
19 is located of such development project and  
20 provides such individual a reasonable op-  
21 portunity to comment on the development  
22 project,

23                      “(iii) a comprehensive market study  
24 of the housing needs of low- and moderate-  
25 income individuals in the area to be served

1 by the development project is conducted  
 2 before the credit allocation is made and at  
 3 the developer's expense by a disinterested  
 4 party who is approved by such agency, and

5 “(iv) a written explanation is available  
 6 to the general public for any allocation of  
 7 a housing credit dollar amount which is  
 8 not made in accordance with established  
 9 priorities and selection criteria of the hous-  
 10 ing credit agency.

11 “(B) QUALIFIED ALLOCATION PLAN.—For  
 12 purposes of this paragraph, the term ‘qualified  
 13 allocation plan’ means any plan—

14 “(i) which sets forth selection criteria  
 15 to be used to determine housing priorities  
 16 of the housing credit agency which are ap-  
 17 propriate to local conditions,

18 “(ii) which also gives preference in al-  
 19 locating housing credit dollar amounts  
 20 among selected development projects to—

21 “(I) development projects serving  
 22 the lowest income owners, and

23 “(II) development projects which  
 24 are located in qualified census tracts  
 25 (as defined in section 42(d)(5)(C))

1                   and the development of which contrib-  
2                   utes to a concerted community revital-  
3                   ization plan, and

4                   “(iii) which provides a procedure that  
5                   the agency (or an agent or other private  
6                   contractor of such agency) will follow in  
7                   monitoring for noncompliance with the  
8                   provisions of this section and in notifying  
9                   the Internal Revenue Service of such non-  
10                  compliance which such agency becomes  
11                  aware of and in monitoring for noncompli-  
12                  ance with habitability standards through  
13                  regular site visits.

14                  “(C) CERTAIN SELECTION CRITERIA MUST  
15                  BE USED.—The selection criteria set forth in a  
16                  qualified allocation plan must include—

17                       “(i) development project location,

18                       “(ii) housing needs characteristics,

19                       “(iii) development project characteris-  
20                       tics, including whether the development  
21                       project includes the use of existing housing  
22                       as part of a community revitalization plan,

23                       “(iv) populations with special housing  
24                       needs,

1 “(v) low-to-moderate income housing  
2 waiting lists, and

3 “(vi) populations of individuals with  
4 children.

5 “(2) CREDIT ALLOCATED TO BUILDING NOT TO  
6 EXCEED AMOUNT NECESSARY TO ASSURE DEVELOP-  
7 MENT PROJECT FEASIBILITY.—

8 “(A) IN GENERAL.—The housing credit  
9 dollar amount allocated to a development  
10 project shall not exceed the amount the housing  
11 credit agency determines is necessary for the fi-  
12 nancial feasibility of the development project  
13 and its viability as a qualified low-to-moderate  
14 income development project throughout the  
15 compliance period.

16 “(B) AGENCY EVALUATION.—In making  
17 the determination under subparagraph (A), the  
18 housing credit agency shall consider—

19 “(i) the sources and uses of funds and  
20 the total financing planned for the develop-  
21 ment project,

22 “(ii) any proceeds or receipts expected  
23 to be generated by reason of tax benefits,

24 “(iii) the percentage of the housing  
25 credit dollar amount used for development



1 project costs other than the cost of inter-  
 2 mediaries, and

3 “(iv) the reasonableness of the devel-  
 4 opmental and operational costs of the de-  
 5 velopment project.

6 Clause (iii) shall not be applied so as to impede  
 7 the development of development projects in  
 8 hard-to-develop areas.

9 “(C) DETERMINATION MADE WHEN CRED-  
 10 IT AMOUNT APPLIED FOR AND WHEN BUILDING  
 11 SOLD.—

12 “(i) IN GENERAL.—A determination  
 13 under subparagraph (A) shall be made as  
 14 of each of the following times:

15 “(I) The application for the  
 16 housing credit dollar amount.

17 “(II) The allocation of the hous-  
 18 ing credit dollar amount.

19 “(III) The date the building is  
 20 first sold after having been placed in  
 21 service.

22 “(ii) CERTIFICATION AS TO AMOUNT  
 23 OF OTHER SUBSIDIES.—Prior to each de-  
 24 termination under clause (i), the taxpayer  
 25 shall certify to the housing credit agency

1           the full extent of all Federal, State, and  
2           local subsidies which apply (or which the  
3           taxpayer expects to apply) with respect to  
4           the building.

5       “(m) REGULATIONS.—The Secretary shall prescribe  
6 such regulations as may be necessary or appropriate to  
7 carry out the purposes of this section, including  
8 regulations—

9           “(1) dealing with—

10           “(A) development projects which include  
11           more than 1 building or only a portion of a  
12           building,

13           “(B) buildings which are sold in portions,

14           “(2) providing for the application of this section  
15           to short taxable years,

16           “(3) preventing the avoidance of the rules of  
17           this section, and

18           “(4) providing the opportunity for housing cred-  
19           it agencies to correct administrative errors and omis-  
20           sions with respect to allocations and record keeping  
21           within a reasonable period after their discovery, tak-  
22           ing into account the availability of regulations and  
23           other administrative guidance from the Secretary.

1       “(n) TERMINATION.—Clause (ii) of subsection  
2 (g)(3)(C) shall not apply to any amount allocated after  
3 December 31, 2004.”.

4       (b) CURRENT YEAR BUSINESS CREDIT CALCULA-  
5 TION.—Section 38(b) of the Internal Revenue Code of  
6 1986 (relating to current year business credit) is amended  
7 by striking “plus” at the end of paragraph (12), by strik-  
8 ing the period at the end of paragraph (13) and inserting  
9 “, plus”, and by adding at the end the following:

10           “(14) the home ownership credit determined  
11       under section 42A(a).”.

12       (c) LIMITATION ON CARRYBACK.—Subsection (d) of  
13 section 39 of the Internal Revenue Code of 1986 (relating  
14 to carryback and carryforward of unused credits) is  
15 amended by adding at the end the following:

16           “(10) NO CARRYBACK OF HOME OWNERSHIP  
17 CREDIT BEFORE EFFECTIVE DATE.—No amount of  
18 unused business credit available under section 42A  
19 may be carried back to a taxable year beginning on  
20 or before the date of the enactment of this para-  
21 graph.”.

22       (d) CONFORMING AMENDMENTS.—

23           (1) Section 55(c)(1) of the Internal Revenue  
24 Code of 1986 is amended by inserting “or subsection  
25 (i) or (j) of section 42A” after “section 42”.

8           “(11) the home ownership credit determined  
9           under section 42A, and”.

(e) CLERICAL AMENDMENT.—The table of sections for subpart D of part IV of subchapter A of chapter 1 of the Internal Revenue Code of 1986 is amended by inserting after the item relating to section 42 the following:

(f) **EFFECTIVE DATE.**—The amendments made by this section shall apply to expenditures made in taxable years beginning after the date of the enactment of this Act.

(a) IN GENERAL.—Part III of subchapter B of chapter 1 of the Internal Revenue Code of 1986 (relating to items specifically excluded from gross income) is amended

1 by redesignating section 139 as section 140 and inserting  
 2 after section 138 the following new section:

3 **“SEC. 139. CERTAIN GAIN FROM SALE OF LOW-TO-MOD-**  
 4 **ERATE INCOME HOUSING.**

5 “(a) IN GENERAL.—Gross income shall not include  
 6 the gain from the sale of any low-to-moderate income  
 7 building made during the taxable year and with respect  
 8 to which the taxpayer is allowed a credit under section  
 9 42A.

10 “(b) LIMITATION.—The amount of gain which may  
 11 be taken into account under subsection (a) with respect  
 12 to the sale of a low-to-moderate income building shall not  
 13 exceed \$10,000 for each low-to-moderate income unit in  
 14 such building.”.

15 (b) CONFORMING AMENDMENT.—The table of sec-  
 16 tions for part III of subchapter B of chapter 1 of such  
 17 Code is amended by striking the item relating to section  
 18 139 and inserting the following new items:

“Sec. 139. Certain gain from sale of low-to-moderate income housing.

“Sec. 140. Cross references to other Acts.”.

19 (c) EFFECTIVE DATE.—The amendments made by  
 20 this section shall apply sales in taxable years beginning  
 21 after the date of the enactment of this Act.

22 **SEC. 4. EXPANSION OF REHABILITATION CREDIT.**

23 (a) CREDIT APPLICABLE TO BUILDINGS AT LEAST  
 24 50 YEARS OLD.—Subparagraph (B) of section 47(c)(1)

1 of the Internal Revenue Code of 1986 (relating to quali-  
2 fied rehabilitated building is amended to read as follows:

3           “(B) BUILDING MUST BE AT LEAST 50  
4           YEARS OLD.—In the case of a building other  
5           than a certified historic structure, a building  
6           shall not be a qualified rehabilitated building  
7           unless the building was first placed in service  
8           before the date which is at least 50 years before  
9           the date such building is placed in service for  
10          purposes of the credit under this section.”.

11          (b) EFFECTIVE DATE.—The amendment made by  
12 this section shall apply to property placed in service after  
13 the date of the enactment of this Act.

○